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REMARKS

Claims 2-7, 9, 10, 12, and 13 are pending in the present application after this amendment cancels claims 8 and 11. Claims 6, 7, 9, and 10 are amended herein. No new matter is added by the amendments, which are supported throughout the specification and figures. In particular, the amendments to claims 6 and 9 are supported at least in the specification at page 10, lines 10-12, and the amendments to claims 7 and 10 are supported at least in the specification at page 10, lines 8-10. In view of the amendments and the following remarks, favorable reconsideration of this application is respectfully requested.

Applicants gratefully acknowledge the assistance of the Examiner in the teleconference occurring on or about May 8, 2007.

Applicants note with appreciation that the Examiner acknowledges that claim 2-5, 12, and 13 are allowable.

Claims 6 and 9 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. Applicants respectfully traverse.

The Office Action asserts that claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Specifically, the Office Action states that independent claims 6 and 9 are a single element (means) claims, and that the majority of the claim recites the disc structure, while the ultimate paragraph in either independent claim recites the desired result. The Examiner concludes that this is a single means claim.

However, MPEP 2164.08(a) addresses the single means claim, and defines a single means claim as a *means recitation* that does not appear in combination with another recited

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element of means, and states that such a claim is subject to an undue breadth rejection under 35 U.S.C. 112, first paragraph. However, claims 6 and 9 do not have a means recitation, and therefore cannot be a single means claim.

MPEP 2181 states that a claim limitation will be presumed to invoke 35 U.S.C. 112, sixth paragraph, if it meets the following 3-prong analysis: (A) the claim limitations *must use the phrase "means for" or "step for"*; (B) the "means for" or "step for" must be modified by functional language; and (C) the phrase "means for" or "step for" must not be modified by sufficient structure, material, or acts for achieving the specified function. Since the rejected claims do not recite the words "means" or "step", these claims certainly fail prong (A) of the test. Additionally, the claims also fail prongs (B) and (C) of the test. Since the claims do not fall under 35 U.S.C. 112, sixth paragraph, the claim claims do not make a means recitation, and therefore cannot be a single means claim. The Office Action apparently objects to the claims for having only a single element. However, this is not a proper basis for rejecting a claim. Therefore the rejection is improper at least for the above-presented reasons.

Additionally, and in the interest of expediting prosecution, Applicants herein amend claims 6 and 9 to clarify the subject matter recited therein. It is respectfully submitted that the amended claims are allowable.

Claims 7, 8, 10, and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Applicants respectfully traverse.

The Examiner apparently objects to the features of an average of the medium tilt and a closest tilt detection area. Specifically, the Examiner states that "the dependent claims introduce a controller which functions/is responsive to the above criteria, but no element/means is recited that yields such criteria" (Office Action; page 3, lines 7-9). However, the features of the claims

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are properly recited in the claims. For instance, unamended claims 7 and 10 recite "a tilt controller adapted to perform tilt control by the use of an average of the medium tilts detected at the special marks in a single round of said medium." The special marks are recited in the preambles of the independent claims, and a detector is recited in each of the independent claims. Dependent claims 7 and 10 additionally recite a controller which uses an average of the tilts detected. The tilt controller itself calculates an average of the tilts. This calculation is discussed in sufficient detail in the published specification at paragraph 0066.

However, in the interest of expediting prosecution, claims 7 and 10 have been amended to clarify the subject matter recited therein. Amended claim 7 recites "[a]n optical disk recording/reproducing apparatus according to claim 6, said plurality of special marks being formed in a single round track of said medium, said apparatus further comprising: a tilt controller adapted to perform tilt control by the use of an average of the medium tilts detected and calculated at said plurality of special marks formed in the single round track of said medium."

Claim 10 has been amended in a similar fashion. It is respectfully submitted that the amended claims are definite and allowable.

The cancellation of claim 8 and 11 obviates the rejection of these claims.

In view of the remarks set forth above, this application is believed to be in condition for allowance which action is respectfully requested. However, if for any reason the Examiner should consider this application not to be in condition for allowance, the Examiner is respectfully requested to telephone the undersigned attorney at the number listed below prior to issuing a further Action.

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Any fee due with this paper may be charged to Deposit Account No. 50-1290.

Respectfully submitted,



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